IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12274 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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HARSHADRAY CHIMANLAL VYAS

Versus

EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 12274 of 2004

MS BANNA S DUTTA for Petitioner No. 1

MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 25/10/2004

ORAL JUDGEMENT

Rule. Learned AGP Mr. N.D. Gohil waives service of rule on behalf of the respondents. At the joint request of the learned Counsel for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner has made certain grievances about non-payment of amounts towards provident fund on account of mistake on the part of the respondents in crediting certain amounts in the provident fund account of the petitioner for a sum deducted from his salary at the relevant time.

3. The petitioner had contended that in the year 1987-88, though deductions were made from his salary, the amount was not deposited in the GPF account of the petitioner for the relevant year. This mistake was not corrected by the respondents despite several representations of the petitioner. In the meantime the

petitioner retired on superannuation with effect from 31.5.1997. Even after the retirement of the petitioner, his provident fund account was not corrected by the respondents and the missing amount was not credited to his account. The petitioner was therefore, compelled to file the present petition.

4. In response to the notice issued by this Court, the respondent No.2 has filed an affidavit, in which it is stated that for the year 1987-88, credit of Rs. 2,744/- though required to be made in the GPF account of the petitioner, was not made and the respondent No.2 has already submitted the proposal to the State Government, which is sent for approval to the Director of Pension and Provident Fund Department. It is further stated that Rs. 5,160/- was missing from the GPF Account of the petitioner for the period from June, 1988 to April, 1996 and the same has already been credited with interest by a cheque dated 15.2.1999 of Rs. 15,131/-. It is stated by the learned Counsel for the petitioner that the said cheque was however, not accepted by the petitioner.

5. It is further stated that over and above the said amount of Rs. 15,131/- for which a cheque was issued in favour of the petitioner, another amount of Rs. 10,197/was found due and payable and along with interest the amount payable to the petitioner came to Rs. 11,216/-. The respondent No.2 therefore asked the petitioner that he should give an undertaking that now no further amount is due and payable, but the petitioner was not willing to give such an undertaking and since such an undertaking was asked for by the Director of Pension and Provident Fund vide his letter dated 29.4.2000, it was not possible to pay the said amount to the petitioner.

6. In response to this affidavit in reply filed by the respondent No.2, the Counsel for the petitioner, under the instructions of the petitioner, states that the petitioner is not in a position to show any further outstanding amounts due and payable to him.

7. It is unfortunate that the petitioner who has retired from Government service after years of labour and hardwork has to move a Court of law for receiving his rightful dues from the Government. The respondents have not disputed that certain amounts were required to be credited to the GPF account of the petitioner, which was not done for years together. The representations made by the petitioner were also not of any avail. Finally in the year 2000, the respondents decided to release the amount of Rs. 11,216/-, but insisted that the petitioner

must give a receipt of full and final settlement of all his dues. This was most unfortunate, uncalled for and impermissible. If the respondents found that any amount is due and payable to the petitioner, it was the duty of the respondents to make payment of the same forthwith and the respondents could not have insisted that the petitioner must accept the amount as full and final settlement of all his claims. If the petitioner had any other demand or claim against the respondents, it was his right to agitate the same before the authorities or the Court of law. The respondents could not have however, foreclosed such a right by refusing to release the amount admittedly payable to the petitioner, unless he gave his full and final settlement receipt. Such a stand of the respondent was illegal and impermissible and could not have been adopted by the Government.

8. In the result, I hold that the petitioner is entitled to receive the said amount of Rs. 11,216/- with further interest. It is stated that the amount of Rs. 11,216/- carries calculation of interest till year 2000. The petitioner would therefore be entitled to receive the said amount of Rs. 11,216/- with interest at the rate of 9% per annum from 1.4.2000 till the date of actual payment. In the facts and circumstances, the petitioner will also be entitled to receive cost of this litigation which is quantified at Rs. 5,000/-.

9. The petition is accordingly allowed by directing the respondents to pay to the petitioner the said amount of Rs. 11,216/- with 9% simple interest from 1.4.2000, till its actual payment. If the petitioner still has any claim towards the retiral dues, it will be open for the petitioner to approach the Government with proper material in support of such claim. The respondents are also directed to reissue cheque for Rs.15,131/- as against the cheque dated 15.2.1999, which is stated to be not accepted by the petitioner on earlier occasion. It is made clear that the said amount shall however not carry any interest.

10. Rule is made absolute with costs as mentioned above.

(Akil Kureshi, J.)
*/Mohandas